

² 5 U.S.C. § 8101 *et seq.*

loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$531.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.⁴

On June 24, 1997 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed breast cancer and fibromyalgia due to factors of her federal employment including continuous heavy lifting, carrying, and walking. She stopped work on July 5, 1997 and retired from federal service effective April 1, 1998. On February 16, 1999 OWCP accepted appellant's claim for aggravation of myalgia and myositis.

Appellant elected to receive FECA compensation rather than Office of Personnel Management benefits effective April 1, 1998. On April 23, 2000 she filed a claim for compensation (Form CA-7) and indicated that her retirement system was Federal Employees Retirement System (FERS). OWCP paid appellant wage-loss compensation on the supplemental rolls commencing April 1, 1998 and on the periodic rolls commencing December 7, 2006.

On August 4, 2020 OWCP received a completed FERS/SSA dual benefits calculation form from SSA, which reported that appellant had been in receipt of SSA age-related retirement benefits since February 2012. The form listed appellant's SSA age-related retirement benefit rates with FERS and without FERS as follows: beginning February 2012 the monthly SSA rate with FERS was \$884.00 and without FERS was \$489.10; beginning December 2012 the monthly SSA rate with FERS was \$899.00 and without FERS was \$497.40; beginning December 2013 the monthly SSA rate with FERS was \$912.40 and without FERS was \$504.80; beginning December 2014 the monthly SSA rate with FERS was \$927.90 and without FERS was \$513.30; beginning December 2015 the monthly SSA rate with FERS was \$927.90 and without FERS was \$513.30; beginning December 2016 the monthly SSA rate with FERS was \$930.60 and without FERS was \$514.80; beginning December 2017 the monthly SSA rate with FERS was \$949.20 and without FERS was \$525.00; beginning December 2018 the monthly SSA rate with FERS was \$975.70 and without FERS was \$539.70; and beginning December 2019 the monthly SSA rate with FERS was \$991.30 and without FERS was \$548.30.

On August 19, 2020 OWCP made a preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$42,413.84, for which

³ Docket No. 08-1815 (issued June 11, 2009); Docket No. 07-1344 (issued February 19, 2008).

⁴ On March 9, 1995 appellant sustained a left hand traumatic injury which OWCP accepted for left dorsal wrist ganglion and resulting surgery. On January 25, 1996 she sustained left shoulder, arm, and neck traumatic injuries which OWCP accepted for left shoulder contusion and sprain. On February 19, 1998 OWCP accepted that appellant had developed right carpal tunnel syndrome due to factors of her federal employment.

she was without fault, because her wage-loss compensation payments for the period February 1, 2012 through July 18, 2020 had not been reduced to offset her SSA age-related retirement benefits attributable to federal service. It determined that she was without fault in the creation of the overpayment because she could not have reasonably known that an improper payment had occurred. OWCP requested that appellant complete an overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation to determine a reasonable repayment schedule and advised that she could request waiver of recovery. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written record or a prerecoument hearing.

OWCP completed a FERS offset calculation worksheet on August 19, 2020. It determined the overpayment amount by multiplying the daily FERS offset amount by the number of days in each period February 1, 2012 through July 18, 2020 resulted in a total overpayment of \$42,413.84. OWCP related: from February 1 through November 30, 2012, appellant received an overpayment in the amount of \$3,957.68; from December 1, 2012 through November 30, 2013, appellant received an overpayment in the amount of \$4,832.33; from December 1, 2013 through November 30, 2014, appellant received an overpayment in the amount of \$4,904.64; from December 1, 2014 through November 30, 2016, appellant received an overpayment in the amount of \$9,991.40; from December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$5,003.31; from December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$5,104.38; from December 1, 2018 through November 30, 2019, appellant received an overpayment in the amount of \$5,246.37; and from December 1, 2019 through July 18, 2020, appellant received an overpayment in the amount of \$3,373.62.

In an overpayment action request form received September 22, 2020, appellant requested that OWCP make a decision based on the written evidence and requested waiver of recovery because she was without fault in the creation of the overpayment. She submitted a September 15, 2020 Form OWCP-20 listing her monthly income of \$8,443.72⁵ including \$1,491.00 in SSA benefits for her spouse and \$941.00 for her, \$2,124.60 in her FECA benefits, and \$3,744.83 in income for her spouse as well as \$142.29 in benefits. Appellant listed her monthly expenses of \$8,299.91 as housing \$1,589.91, food \$1,500.00, clothing \$1,000.00, utilities \$1,200.00, and miscellaneous expenses of \$1,800.00. She provided other monthly expenses totaling \$1,210.00 and listed assets of \$14,467.59 with cash \$500.00, checking account \$8,299.91, other personal property of \$5,000.00, and savings account of \$25.00.

By decision dated September 25, 2020, OWCP finalized its preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$42,413.84 for the period February 1, 2012 through July 18, 2020. It determined that she was without fault in the creation of the overpayment. OWCP denied waiver of recovery of the overpayment, noting that appellant provided no financial documentation to support her reported

⁵ Appellant incorrectly totaled her monthly income as \$8,493.72 rather than \$8,443.72.

monthly income and expenses. It required recovery of the overpayment by deducting \$531.00 every 28 days from her continuing compensation payments

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁶ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁷

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to the employee's federal service.⁸ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant received a \$42,413.84 overpayment of compensation for the period February 1, 2012 through July 18, 2020, for which she was not at fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset.

In its September 25, 2020 decision, OWCP found that an overpayment of compensation was created for the period February 1, 2012 through July 18, 2020. The overpayment determination was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA compensation for wage loss and SSA age-related retirement benefits attributable to federal service for the same period.¹⁰ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period February 1, 2012 through July 18, 2020. The Board thus finds that fact of overpayment has been established.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁹ FECA Bulletin No. 97-09 (February 3, 1997); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹⁰ 5 U.S.C. § 8116(d)(2); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

federal service. SSA provided their rate with FERS, and without FERS for specific periods commencing February 1, 2012 through July 18, 2020. OWCP provided its calculations for each relevant period based on a FERS offset calculation worksheet and in its August 19, 2020 preliminary overpayment determination.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 1, 2012 through July 18, 2020 and finds that an overpayment of compensation in the amount of \$42,413.84 was created.¹¹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹² The waiver or refusal to waive an overpayment of compensation by OWCP is a matter that rests within OWCP's discretion pursuant to statutory guidelines.¹³

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁴ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁵

Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁶

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP.

¹¹ *L.L.*, Docket No. 18-1103 (issued March 5, 2019); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹² 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹³ *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *Robert Atchison*, 41 ECAB 83, 87 (1989).

¹⁴ 20 C.F.R. §§ 10.436(a)-(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2018).

¹⁵ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹⁶ 20 C.F.R. §§ 10.437(a)-(b).

This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁷ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹

While appellant submitted a completed Form OWCP-20 dated September 15, 2020, she failed to furnish sufficient financial documentation to support her income and expenses. OWCP found that she did not provide all of the requested information regarding income, expenses, debts, and assets necessary to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. OWCP found that absent complete documentation of appellant's expenses and assets the evidence was insufficient to establish that recovery of the overpayment would defeat the purposes of FECA or be against equity and good conscience.²⁰

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in requiring recovery of the overpayment. Appellant has thus failed to establish that recovery of the overpayment of compensation would either defeat the purpose of FECA or be against equity and good conscience. Accordingly, the Board finds that OWCP properly denied waiver of recovery.²¹

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that, when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account

¹⁷ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁸ *Id.* at § 10.438(b).

¹⁹ *Id.* at § 10.436.

²⁰ *J.W.*, Docket No. 20-0857 (issued March 24, 2021).

²¹ *Supra* note 19.

the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²²

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$531.00 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with the August 19, 2020 preliminary overpayment determination. Appellant completed the overpayment recovery questionnaire, but did not provide the necessary financial information to support her income and expenses prior to the final September 25, 2020 decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²³ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁴ As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$42,413.84 overpayment at the rate of \$531.00 every 28 days from appellant's continuing compensation payments.²⁵

CONCLUSION

The Board finds that appellant received a \$42,413.84 overpayment of compensation for the period February 1, 2012 through July 18, 2020, for which she was not at fault because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$531.00 from her continuing compensation payments every 28 days.

²² 20 C.F.R. § 10.441(a); *A.F.*, *supra* note 12; *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²³ *Id.* at § 10.438; *B.G.*, Docket No. 20-0541 (issued April 28, 2021); *A.F.*, *id.*

²⁴ *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002).

²⁵ *E.M.*, Docket No. 19-0857 (issued December 31, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board